IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

CRL.A.No. 56 of 1999()

CC.998/1993 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER/COMPLAINANT:

FOOD INSPECTOR,CORPORATION OF COCHIN,
ERNAKULAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.C.S.MANILAL

RESPONDENTS/ACCUSED:

1.M.RAJAPPAN NAIR,S/O.MADHAVAN PILLAI,
PROPRIETOR,P.V.R.STORES,PALARIVATTOM.

2.SIDDIQUE,MANAGING PARTNER,STAR TRADING COMPANY,
GENERAL MERCHANT AND COMMISSION AGENT, BASIN ROAD,
ERNAKULAM.

3.U.CHANDRASEKHAR,S/O.VANIYA RAJAN,PROPRIETOR,
SRI.SENTHIL KUMAR TRADERS,113,PERUMAL KOIL STREET,
COIMBATORE – 641 001.

4.LAXMI PROTEIN PRODUCTS,TOOR DHALL MANUFACTURER
& WHOLE SALE MERCHANT,APPROACH ROAD, VASAD P.O.,
PIN 388 306, KAIRA DISTRICT, GUJARAT STATE.

BY ADV. SRI.T.G.SUNIL (PRANAVAM) FOR R2
SRI.N.A.MURALEEDHARAN FOR R1
SRI.J.JOSE FOR R4
SRI.P.P.PRAVEEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A.6/2001

ORDER ON C.M.P.NO.31/2002 IN M.F.A.6/2002

DISMISSED

SD/- J.B.KOSHY,JUDGE

SD/-M.N.KRISHNAN,JUDGE

/TRUE COPY/

J.B.KOSHY, J.

Criminal Appeal.No.56 OF 1999 ()

Dated this the 15th day of November, 2006

JUDGMENT

This appeal is filed against the order of acquittal. Accused Nos.2 to 4 were acquitted for charges under Sections 2(ia) (f), 7 (v), 16-1A(ii) of the Prevention of Food Adulteration Act, 1954 read with rule 27,29 of the Prevention of Food Adulteration Rules 1955. The allegation was that on 17.9.1993 at about 10.30 a.m. the Mobile Vigilance Squad, Food Inspector inspected the provision shop of the 1st respondent and demanded 750 grams of Toordhall by paying Rs.15/- from the mini bag. After paying the price it was divided into three equal parts received in bottles and send for examination. The sample on analysis found contained a coal-tar-dye, Tartrazine (colour index 19140) and therefore the appellant was of the view that it was adulterated and action can be taken under the Prevention of Food Adulteration Rules, 1955. According to the 1st accused he purchased the same from the 2nd accused. A2 to A4 denied the sale of the sampled article to the 1st accused.

However, it is not disputed that the goods were purchased from the 1st accused. But the court found that the sample was taken violating the provisions of Section 10(7) of the Act and it was not explained what tests were conducted for finding out the presence of coal-tar-dye, tartrazine. Hence accused was acquitted.

2. Counsel for the appellant argued that as held by the Division Bench of this Court in **Food Inspector v. Narayanan (2003 (2) KLT 1035)** that Section 10(7) is not mandatory. In that case an employee of the very same shop was called as a witness. It was contended that he is not an independent person and there is violation of Section 10(7). It was held that an employee as a witness is enough for confirming the parameters of the Section and there is substantial compliance. Section 10 (7) reads as follows:

> "**10.Powers of Food Inspectors:-**
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> (7) Where the Food Inspector takes any action under clause (a) of sub-sections (1), sub-sections (2), sub-sections (4) or sub-sections (6), he shall call one or more persons to be present at the

time when such action is taken and take his or their signatures."

Division Bench in the above case at paragraph 6 of the judgment held as follows:

"1. S.10(7) is enacted as a safeguard against any possible allegation of excesses, irregularity or unfairness on the part of the Food Inspector. This being the object, it is in the interest of the prosecuting authority to comply with provisions of S.10(7) Statute cast a duty on the Food Inspector to call witness.

2. The object of calling persons to witness action is to assure fairness in the action, the persons called must be independent and not suspecable to the influence of the Food Inspector.

3. The obligation which S.10(7) casts on the Food Inspector is only to "call" one or more persons to be present when he takes action. In the case where the Food Inspector did call persons to witness the taking of sample and none was willing to co-operate, the prosecution is relieved of its obligation to cite independent witnesses. He has no means to enforce the presence of persons called to witness the action.

4. An employee of the shop from where sample is taken can be called as a witness under S.10(7) and it cannot be stated without any further evidence that he is influenced by the Food Inspector or he is not an independent witness as far as Food Inspector is concerned. There is no hard and fast rule as to what classes of persons will be independent. It is at the same time too much to

> assume that because the Food Inspector can take action under the Act against persons dealing with articles of food all persons connected with the trade in articles of food or an employee of the shop would be dependent upon the Food Inspector.
>
> 5. S.10(7) of the Act is no mandatory in the sense that non-compliance of the same by itself will not violate the proceedings in all cases. If from the totality of the evidence regularity of the action in taking sample from a particular shop by the Food Inspector is proved, proceedings can be sustained even if S.10(7) is not complied with. S.10(7) is directory and it puts an obligation on the Food Inspector to comply with the directives in the Section. If it is not complied with, the burden will be very heavy on the prosecution to prove the regularity of the action of the Food Inspector in taking sample.
>
> Here in this case employee of the shop who was called as a witness is an independent witness as far as Food Inspector is concerned. No serious infirmities were also raised by the accused regarding sampling or regularity of the action of the Food Inspector."

On the facts of that case, it was held that acquittal of the accused cannot be accepted. But in this case, no steps were taken by PW4 in complying with Section 10(7) at all. Four witnesses were examined. PW1 is the formal complainant. PW2 is the Local Health Authority, PW3 is the Public Analyst. PW4 is the detected Food Inspector. Ext.P11 is the mahazar of taking

the sample. One Gopinathan is shown as witness. But the defense version is that such a person is not in existence. Address of the person is not mentioned in the mahazar. No effort was made to produce Gopinathan or details of Gopinathan. No evidence was adduced to show Gopinathan is not a fictitious person. In cross examination also PW4 was not able to show any light on the identity of Gopinathan. Hence he failed to comply with Section 10(7) of the P.F.A.Act. According to the 1st accused, PW4 alone came to the shop and no evidence was adduced to show that it was otherwise. 1st accused was examined as DW1. He also stated that Food Inspector came alone. He was not cross examined. No witness was called while taking sample. This is a serious infirmity.

3. Apart from the above the court rightly held that no evidence was adduced regarding the nature of tests conducted for finding out the presence of coal-tar-dye, tartrazine. It is true that tartrazine is a permitted food colour in certain articles but not permitted in food grains. But the prosecution ought have adduced proof that this sample contained

tartrazine. In Ext.P15 report of the Centre Food Labouratery as well as in Ext.P2 Public Analyst report, it is not stated how tartrazine was detected and what was the nature of conformity test. Exts.P2 and P15 were marked without examining anybody. The complete absence of non-compliance of S.10(7) coupled with absence of any evidence regarding the nature of tests conducted for conforming the presence of tartrazine in the sample lead to acquittal of the accused. After going through the evidence and reports, I am of the view that view of the trial court is a possible view. There is no perverse finding or patent error of law. Since the court has taken a possible view while acquitting the accused, this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.56 OF 1999

JUDGMENT

15th November, 2006